

# Formal Action # 97-4112-I

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH  
JUDICIAL DISTRICT AT NASHVILLE

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STATE OF TENNESSEE,  
Plaintiff,

v.

CHARLES W. HARLAN, individually and  
FORENSIC PATHOLOGY ASSOCIATES,  
P.C., a domestic corporation,

Defendants.

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## AGREED FINAL JUDGMENT

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Plaintiff, the State of Tennessee, by and through John Knox Walkup, the Attorney General and Reporter, on behalf of the Division of Consumer Affairs of the Department of Commerce and Insurance and the Department of Health (hereinafter "State" or "State of Tennessee"), and Defendants, Charles W. Harlan, M.D., individually and Forensic Pathology Associates, P. C. of Nashville, Tennessee (hereinafter collectively referred to as "Harlan" or "Defendants"), as evidenced by their signatures, do consent to the entry of this Judgment and its provisions. Without admitting liability, the Defendants enter into this Judgment solely to avoid the time and expense associated with litigation. This is an Agreed Final Judgment ("Order" or "Judgment") for which execution may issue. This Order only resolves matters set forth in the State's Complaint. Defendants hereby accept and expressly waive any defect in connection with service of process issued on the Defendants by the State. IT IS HEREBY AGREED, ORDERED, AND ADJUDGED THAT:

### 1. DENIAL OF WRONGDOING

1.1 Defendants deny all wrongdoing in this matter.

## **2. JURISDICTION**

2.1 Jurisdiction of this Court over the subject matter and over the Defendants for the purpose of entering into and enforcing this Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Order. Additionally, jurisdiction is retained to permit the State to petition for enforcement of this Order including punishment of violations thereof including the imposition of civil penalties, attorneys' fees and/or contempt sanctions against the Defendants. Defendants agree to pay all court costs and attorneys' fees associated with any successful petitions to enforce any provision of this Order against Defendants.

## **3. VENUE**

3.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Order is solely in the Chancery Court of Davidson County, Tennessee.

## **4. PARTIES**

4.1 Defendants, Charles W. Harlan, M. D. , individually and Forensic Pathology Associates, P.C., warrant and represent that they are the proper parties to this Order. Defendants further acknowledge that they understand that the State expressly relies upon this representation and warranty, and that if it is false, unfair, deceptive, misleading or inaccurate, the State has the right to move to vacate or set aside this Order, or request that Defendants be held in contempt, if the State so elects.

4.2 Defendants, Charles W. Harlan, M. D., individually and Forensic Pathology Associates, P.C., represent that they are the true legal names of the entities entering into this Order. The Defendants understand that the State expressly relies upon this representation and if said representations are false, inaccurate, deceptive, unfair or misleading the State has the right to move to vacate or set aside this Order or request that the Defendants be held in contempt, if the State so elects.

## **5. PERMANENT INJUNCTION**

Accordingly, it is hereby agreed that upon approval of the Court, Defendants shall be permanently and forever enjoined and bound from, directly or indirectly, engaging in the acts or practices set forth herein:

5.1 Defendants shall not, directly or indirectly, represent, state, advertise or promote that Dr. Charles W. Harlan is appointed to any position by the State of Tennessee (such as, but not limited to, the State of Tennessee Chief Medical Examiner) or that Defendants are affiliated, connected or associated with, or certified or sponsored by, the State of Tennessee, Department of Health.

5.2 Defendants shall not represent, directly or indirectly, state, advertise or promote that their services are those of the State of Tennessee, Department of Health, Chief Medical Examiner's office or that Defendants' services have the sponsorship, approval or certification of the State of Tennessee.

5.3 Defendants shall not, directly or indirectly, impersonate, pretend to be or otherwise give the impression to any person that Dr. Charles W. Harlan is the Chief Medical Examiner of the State of Tennessee.

5.4 Defendants shall be prohibited from, directly or indirectly, using terms or phrases that represent, state, promote or advertise to the public that their business is operated or funded by the State of Tennessee, the Department of Health. Without limiting the scope of this provision, Defendants shall be specifically prohibited from using terms or phrases similar to the following: "State Medical Examiner's Office", "Chief Medical Examiner", "State of Tennessee, Department of Health" or "State of Tennessee, Medical Examiner's Office".

5.5 Defendants shall be prohibited from, directly or indirectly, representing, stating, promoting, advertising or otherwise misrepresenting to the public that the offices of Charles W. Harlan, M.D. and Forensic Pathology Associates, P.C. located at 620-B Davidson Street, Nashville, TN, or any other office maintained by Defendants, are offices of the State of Tennessee, that they are the State Medical Examiner's Office or that the businesses located therein have any affiliation with the State of Tennessee or the Department of Health. Defendants shall be prohibited from directly or indirectly sending any bills or invoices for services to any person, business, corporation, governmental entity or the like for professional services rendered stating, indicating, representing, advertising, promoting or otherwise leading the recipient to believe that Defendants are in any way affiliated with the State of Tennessee or the Department of Health or that Charles W. Harlan, M.D. is the Chief Medical Examiner for the State of Tennessee.

5.6 Defendants shall be prohibited from, directly or indirectly, placing advertisements that promote Defendants as the "Chief Medical Examiner", "State Medical Examiner's Office", "State of Tennessee", "Department of Health" or any term or phrase of similar import.

5.7 Defendants shall not, directly or indirectly, represent that Defendants' advertisements were placed by, or with the approval of the State of Tennessee.

5.8 Defendants shall not, directly or indirectly, misrepresent that the State of Tennessee, Chief Medical Examiner's Office, or any entity related to the Department of Health is located at 620-B Davidson Street, Nashville, Tennessee.

5.9 Defendants shall be required to immediately remove any sign or advertisement from public view that indicates that Defendants' offices are that of the "State of Tennessee, Medical Examiner's Office", "The State of Tennessee", "Department of Health", or any other similar message.

5.10 If a person telephones the Defendants and either (1) indicates they are calling to speak with a representative of the State of Tennessee, the State Medical Examiner's Office, the Department of Health or the Chief Medical Examiner's Office or (2) indicates they are calling in response to a listing in the "Real Yellow Pages" or "White Pages", the Defendants shall be required to clearly, conspicuously and affirmatively inform such persons who telephone Defendants' offices that Dr. Charles W. Harlan is not affiliated or associated with the State of Tennessee, the State of Tennessee Medical Examiner's Office or the Department of Health and that Dr. Charles W. Harlan is not the Chief Medical Examiner for the State of Tennessee.

5.11 If in the presence of the Defendants a member of the media indicates that Dr. Harlan or the Defendants are representatives of the State of Tennessee, the Department of Health, the State Medical Examiner's Office or the Chief Medical Examiner's Office, the Defendants shall be required to clearly, conspicuously and affirmatively inform such persons representing the media that Dr. Charles W. Harlan is not the Chief Medical Examiner for the State of Tennessee or otherwise associated with the State of Tennessee, the Department of Health or the State Medical Examiner's Office.

5.12 Defendants shall be required to clearly, conspicuously and affirmatively withdraw from publication and use any listings or advertisements, including but not limited to "Real Yellow Pages" and "White Pages" listings or advertisements, business cards, stationary, forms or signs which would violate any provision of this Order. The Defendants have recently notified the State that they have experienced difficulties withdrawing the "Real Yellow Pages" and "White Pages" listings and advertisements. However, the Defendants shall do everything within their power to withdraw the "Real Yellow Pages" and "White Pages" listings and advertisements. The Defendants shall not pay for any future advertisements which would violate any provision of this Order. Further, the State agrees to assist in this process, if necessary.

## **6. RESTITUTION**

6.1 Defendants represent and warrant that no consumer has complained that the consumer only retained the Defendants because they believed that Dr. Charles W. Harlan was the Chief Medical Examiner or an agent or entity of the State of Tennessee. Defendants further acknowledge that they understand that the State expressly relies upon this representation and warranty, and that if it is false, unfair, deceptive, misleading or inaccurate, the State has the right to move to vacate or set aside this Order, or request that Defendants be held in contempt, if the State so elects. Further, Defendants shall be required to reimburse any person that comes forward and complains within seven (7) days of receipt of the consumer's complaint. Within ten (10) days of payment to a consumer, Defendants shall be required to notify the State of the name, address and amount paid to any consumer under this part.

6.2 Upon entry of this Order, any billing issued by the Defendants which misrepresents Dr. Charles W. Harlan as the "Chief Medical Examiner", "Department of Health", "State of Tennessee", or term or phrase of similar import, shall be deemed to be null and void. Specifically, any person receiving such a billing shall have no obligation to pay such billing. Further, Defendants are prohibited from engaging in

any further billing and collection activities relating to any services which were billed containing misrepresentations.

## **7. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE**

7.1 Defendants shall pay the sum of One Thousand Dollars and 00/100 Cents (\$1,000.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. This payment shall be made as set forth in section 9.

## **8. PAYMENT**

8.1 Defendants shall pay the sum of Four Thousand Dollars and 00/100 Cents (\$4,000.00) to the State of Tennessee. This payment shall be made as set forth in section 9. This payment shall be used as follows: as a payment to the General Fund of the State of Tennessee.

## **9. FORBEARANCE ON MONETARY EXECUTION AND DEFAULT**

9.1 No execution or garnishment on the monetary portion of this Agreed Final Judgment shall issue so long as the Defendants make payment in accordance with paragraph 8.2 herein. In the event, Defendants fail to make any such payment within thirty (30) days of its due date, the entire balance of this Agreed Final Judgment then remaining may be collected by execution, garnishment or other legal process, together with interest pursuant to Tenn. Code Ann. § 47-14-121 from the date of entry of this Agreed Final Judgment. Defendants agree to pay all attorneys' fees and costs associated with any such collection efforts.

9.2 Payment shall be provided to the Consumer Protection Division of the Office of Attorney General as follows: \$100.00 due upon entry of the Order, and \$100.00 due on the first of each month thereafter until the sum of Five Thousand Dollars and 00/Cents (\$5,000.00) is paid in full. The payments shall be made by certified or cashier's checks made payable to the State of Tennessee.

9.3 The first payments received by the State shall be applied to the attorneys' fees portion of this Order. Once that obligation is completed, the final payments shall be applied to the payment to the states portion of this Order in the order they appear in that section.

9.4 Defendants shall be required to retain proof of all payments to the State in the form of canceled checks or copies of cashier's checks for each payment for a full 24 months following their final payment to the State. Defendants shall provide proof of all payments to the State within ten (10) days of a request for such information.

9.5 Defendants agree that any and all such sums are non-dischargeable in a bankruptcy proceeding.

## **10. MONITORING FOR COMPLIANCE**

10.1 Upon request, Defendants agree to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Order. Defendants shall make any requested information available within ten (10) days of the request, at the Office of the Attorney General or at any other location within the State of Tennessee that is mutually agreeable in writing to Defendants and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

10.2 Defendants agree that the State has the right to telephone the Defendants' offices for the purpose of confirming compliance with this Order and state law. The State is not required to disclose that they are representatives of the State when making contact with the Defendants. Further, the State may record the conversation without notice to the Defendants.

10.3 Defendants agree to provide the State with copies of their order for the "Real Yellow Pages" and White Pages advertisements for the next 5 years. Said documents must be provided within five (5) days of placing any such advertisement order.

## **11. REPRESENTATIONS AND WARRANTIES**

11.1 The acceptance of this Order by the State shall not be deemed approval by the State of any of Defendants' advertising or business practices.

11.2 Defendants shall not represent or imply that any procedures or other acts or practices hereafter used or engaged in by Defendants have been approved, in whole or in part, by the State.

11.3 Neither Defendants nor anyone acting on their behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, Department of Health or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of Dr. Harlan.

11.4 Defendants represent and warrant that the execution and delivery of this Order is their free and voluntary act and that this Order is the result of good faith negotiations and that Defendants agree that the Order and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Order in good faith.

11.5 Defendants represent that each signatory to this Order has authority to act for and bind the Defendants.

11.6 This Order may only be enforced by the parties hereto.

11.7 The titles and headers to each section of this Order are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Order.

11.8 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

11.9 This Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Complaint. This Order is limited to resolving only matters set forth in the State's Complaint.

11.10 Nothing in this Order shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Order shall not bar the State or other governmental entity from enforcing laws, regulations or rules against the Defendants.

11.11 This Order shall be binding and effective against the Defendants upon Defendants' execution of the Order.

11.12 Nothing in this Order shall limit the Attorney General's right to obtain information, documents or testimony from the Defendants pursuant to any state or federal law, regulation or rule.

11.13 Defendants will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Order or for any other purpose which would otherwise circumvent any part of this Order or the spirit or purposes of this Assurance.

11.14 Within thirty (30) days of the entry of this Order, Defendants shall submit a copy of this Order to each of their officers, directors, employees and any third parties who act, directly or indirectly, on behalf of the Defendants as an agent, independent contractor or who are, involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Order, Defendants shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Order.

## **12. PENALTY FOR FAILURE TO COMPLY**

12.1 Defendants understand and acknowledge that pursuant to the provisions of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-108 (c), any knowing violation of the terms of this Order shall be punishable by civil penalties of not more than Two Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate sanctions including, but not limited to, contempt sanctions and the imposition of attorneys' fees and civil penalties.

12.2 Defendants understand that upon execution and filing of this Order, any subsequent failure to comply with the terms hereof is prima facie evidence of a violation of the Tennessee Consumer Protection Act.

### **13. PRIVATE RIGHT OF ACTION**

13.1 Nothing in this Order shall be constituted to affect any private right of action that a consumer may hold against the Defendants.

### **14. COMPLIANCE WITH ALL LAWS**

14.1 Nothing in this Order shall be construed as relieving the Defendants of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Order be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

### **15. NOTIFICATION TO STATE**

15.1 For five (5) years following execution of this Order, Defendants shall notify the Attorney General, c/o Consumer Protection Division, 425 Fifth Avenue North, 2nd floor, Cordell Hull Building, Nashville, Tennessee 37243, in writing at least thirty (30) days prior to the effective date of any proposed changes in their corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation of dissolution or subsidiaries, or any other changes in Defendants' status that may effect compliance with obligations arising out of this Order.

### **16. APPLICATION OF ORDER TO DEFENDANTS**

16.1 Defendants agree that the duties, responsibilities, burdens and obligations undertaken in connection with this Order shall apply to Dr. Charles Harlan and Forensic Pathology Associates, P.C., and to each of their officers, directors, partners, affiliates, managers, parents, related entities, agents, representatives, employees, subsidiaries, and any and all other persons or entities acting on their behalf.

### **17. PAYMENT OF COURT COSTS**

17.1 All court costs associated with this action and any other incidental costs or expenses incurred thereby shall be borne by Defendants. No costs shall be taxed to the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State. IT IS SO ORDERED, ADJUDGED AND DECREED.